

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CATV POLE ATTACHMENT)	
TARIFF OF BIG RIVERS)	ADMINISTRATIVE
ELECTRIC CORPORATION)	CASE NO. 251-50

O R D E R

Procedural Background

On September 17, 1982, the Commission issued an Amended Order in Administrative Case No. 251, "The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments," and ordered electric and telephone utilities providing or proposing to provide CATV pole attachments to file tariffs conforming to the principles and findings of the Order on or before November 1, 1982.

On November 30, 1982, Big Rivers Electric Corporation ("Big Rivers") filed rates, rules, and regulations for CATV pole attachments. On November 15, 1982, the Commission suspended Big Rivers' CATV pole attachment tariff to allow the maximum statutory time for investigation and comment from interested persons.

On November 19, 1982, the Kentucky Cable Television Association, Inc., ("KCTA") requested and was granted leave to intervene and comment on Big Rivers' CATV pole attachment tariff. On January 17, 1983, KCTA filed a statement of objections to

various CATV pole attachment tariffs, including those of Big Rivers.

On April 7, 1983, the Commission received an extension of time in which to consider Big Rivers' CATV pole attachment tariff.

Findings

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. Big Rivers' rules and regulations governing CATV pole attachments conform to the principles and findings of the Commission's Amended Order in Administrative Case No. 251, and would be approved, except for the following objections:

- (a) Billing: The late payment provision should be the same as that applied to other customers of Big Rivers.
- (b) KCTA objects to tariff provisions which disclaim liability for loss or damage resulting from Big Rivers' transfer of CATV facilities when the CATV operator has not made the transfers according to the specified timetable. This is a reasonable objection, and Big Rivers should only disclaim liability in such instances for any consequential damages such as loss of service to CATV customers.
- (c) KCTA objects to indemnification and hold harmless provisions which require indemnity from the CATV operator even when Big Rivers is solely liable.

This is a reasonable objection, and should be corrected in the tariff. Big Rivers may require indemnification and hold harmless provisions in cases of alleged sole or joint negligence by the CATV operator, but cannot require same merely because of the existence of CATV attachments and equipment on Big Rivers' poles.

- (d) KCTA objects to lack of tariff provisions which would provide for reduction or lifting of bonding requirements after the CATV operator has proven to be a reliable customer. This is a reasonable objection. If a bond is furnished by the CATV operator to assure performance of required indemnity and hold harmless provisions, such bond should be in a form and amount reasonably calculated to cover the undertakings specified during the "make-ready" and construction phases of the CATV system's operation.

However, Big Rivers' tariff proposing a bonding or insurance requirement of \$5,000 regardless of the size of the CATV undertaking is not an unreasonable amount and will therefore be approved. At the required level of bonding or insurance proposed in the tariff, no reduction should be required after construction is complete.

- (e) KCTA objects to provisions disclaiming liability if the CATV operator is ever prevented from placing or maintaining attachments on Big Rivers' poles, or if CATV service is ever interrupted or television service interfered with. This objection is reasonable, although Big Rivers may have tariff provisions disclaiming liability if the inability of the CATV operator to make attachments is not the fault of Big Rivers, as when municipal franchises or right-of-way must be acquired by the CATV operator prior to making pole attachments.

Similarly, Big Rivers may not require that it be held harmless when its own negligence results in damage to CATV lines and equipment or interference with CATV service, but may require that it be held harmless when such conditions are caused by situations beyond its control.

- (f) KCTA objects to provisions which require a penalty fee at double the normal rate for changes necessary to correct substandard installations by CATV operators. Specifically, KCTA states that while the Commission's Order in this matter authorizes double billing for unauthorized, substandard attachments, it makes no provision for substandard, but authorized installations. This objection is unreasonable. While the CATV

operator may obtain authorization to make attachments, this can in no way relieve the operator of the responsibility to insure that attachments are made in a safe manner which adheres to applicable codes such as the National Electric Safety Code.

(g) Abandonment by the Utility: Big Rivers' provision allowing the CATV operator only 48-hours' notice when it desires to abandon a pole is unreasonable. The CATV operator should be informed of such abandonment as soon as possible, but in any event should have at least 30-days' notice if no other pole is available or planned to be installed by Big Rivers.

(h) Abandonment by the CATV Operator: Big Rivers' tariff provision requiring the CATV operator to pay rental for the then current year is unreasonable. Just as with any other customer, the CATV operator can only be held responsible for rental for the then current month when the CATV operator abandons the pole.

2. Big Rivers should be allowed to substitute 1982 Annual Report information to adjust its annual carrying charge, if the information is available and filed with the Commission.

3. Big Rivers' calculation of its annual carrying cost should be modified to exclude interest expense, as this is covered by the "cost of money" component.

4. KCTA objected to Big Rivers' use of 40-foot and 45-foot poles as the cost basis for its 2-user pole attachment rates. KCTA's objection is reasonable. The average cost of a 2-user pole should be the weighted average cost of 35-foot and 40-foot poles. As Big Rivers has no 35-foot poles, it should use the cost of 40-foot poles.

5. KCTA's objection that Big Rivers has not provided adequate documentation to allow verification of its pole costs is reasonable. Big Rivers should provide detailed supporting documentation showing that its calculation of average pole costs conforms to the methodology set forth in the Commission's Order of September 17, 1982.

ORDERS


IT IS THEREFORE ORDERED that Big Rivers' CATV pole attachment tariff filed with the Commission on October 26, 1982, be and it hereby is rejected.

IT IS FURTHER ORDERED that Big Rivers shall file revised rates, rules, and regulations governing CATV pole attachments with the Commission within 30 days from the date of this Order, and that the revised rates, rules and regulations shall conform to the findings of this Order.

IT IS FURTHER ORDERED that Big Rivers shall file detailed workpapers supporting its revised rates at the same time it files its revised rates, rules and regulations.

Done at Frankfort, Kentucky, this 27th day of May, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary